

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

OCTAVIA CALDWELL,
Petitioner,

VS.

JOE KEFFER, Warden,
FMC-Carswell,
Respondent.

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CIVIL ACTION NO.4:10-CV-544-Y

ORDER ADOPTING
MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
(With special instructions to the clerk of court)

In this action brought by petitioner Octavia Caldwell under 28 U.S.C. § 2241, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on December 29, 2010; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on January 11, 2011.¹

The Court, after **de novo** review, concludes that the petitioner's objections must be overruled, that the respondent's motion to dismiss must be granted, and the petition for writ of habeas corpus under 28 U.S.C. § 2241 should be dismissed for lack of jurisdiction, for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED, as modified.²

¹On January 11, 2011, Caldwell filed a document entitled "Rebuttal." As the document was prepared after the magistrate judge's report, the Court will construe it as objections to that report. The clerk of court is directed to note this on the docket.

²As determined by the magistrate judge, because Caldwell was not convicted of any offenses involving the "honest services" doctrine, the decision of the Supreme Court in *Skilling v. United States*, 130 S.Ct. 2896 (2010) has no relevance and is not applicable. The magistrate judge also determined that the

Respondent Keffer's motion to dismiss (doc. 12) is GRANTED.

Octavia Caldwell's petition for writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

SIGNED June 8, 2011.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Skilling decision is not a retroactively-applicable decision for purposes of the first element in the test for determining whether a § 2241 petition may be filed consistent with the "savings clause" of § 2255. The respondent has now acknowledged to this Court that the *Skilling* decision is retroactive for such purposes. See *Edelman v. Keffer*, No.4:10-CV-531-Y (April 26, 2011, Response.) As the *Skilling* case is not applicable to Caldwell's conviction, this does not change the resolution of Caldwell's petition.